

Opinion of the Court.

ARNDSTEIN v. McCARTHY, UNITED STATES
MARSHAL FOR THE SOUTHERN DISTRICT OF
NEW YORK.

No. 575. Petition of trustee in bankruptcy for leave to intervene, for certification of the entire record, and for reargument, submitted November 22, 1920.—Denied December 20, 1920.

The decision of this case, to which the present application relates, is reported in this volume, pages 71 *et seq.*

Mr. Saul S. Myers, Mr. Francis M. Scott and Mr. Walter H. Pollak, for the trustee in bankruptcy, in support of the petition.

Memorandum for the court by MR. JUSTICE McREYNOLDS.

The trustee in bankruptcy has filed an earnest petition asking that we (a) allow him to intervene, (b) permit reargument of the appeal, (c) direct that the entire record be certified to this court, (d) recall the mandate, (e) stay all proceedings in respect thereto, and (f) grant further and proper relief.

The court below heard the cause as upon demurrer and held the petition for *habeas corpus* insufficient. Disagreeing with the result we concluded that the bankrupt did not waive his constitutional privilege merely by filing sworn schedules, that the petition was adequate, and that the writ should have issued. The mandate only requires the trial court to accept our decision upon the point of law, to issue the writ and then to proceed as usual. If the petition does not correctly set forth the facts, or if proper reasons exist for holding the prisoner not shown by the petition neither our opinion nor mandate prevents them from being set up in the return and duly considered.

Alleged defects in the record appear to be based upon a misconception.

Our conclusion concerning the constitutional question presented, we think, is so plainly correct that a reargument would be unprofitable.

The petition is denied.

MR. JUSTICE DAY took no part in the consideration or decision of this cause.

MARSHALL, AS RECEIVER OF ALL PACKAGE
GROCERY STORES COMPANY, *v.* PEOPLE OF
THE STATE OF NEW YORK.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT.

No. 294. Submitted October 12, 1920.—Decided December 20, 1920.

1. At common law the crown of Great Britain, by virtue of a prerogative right, had priority over all subjects for the payment out of a debtor's property of all debts due to it, whether the property was in possession of the debtor or of a third person, or *in custodia legis*; and the priority could be defeated or postponed only through passing the title to such property, absolutely or by way of lien, before the sovereign sought to enforce his right. P. 382.
2. A like right of priority, based on sovereign prerogative, belongs to the State of New York, as her highest court has decided, through her adoption, by her constitutions, of the common law, and attaches to a debt due the State by a sister-state corporation as a license fee or tax for the privilege of doing business in New York, although no statute of the State makes the tax a lien or declares its priority. P. 383.
3. The question whether this priority is a prerogative right or a rule of administration is a question of local law, the determination of which by the highest court of the State concludes the federal courts. P. 384.
4. The priority extends to all property of the debtor within the borders